
EXHIBIT D

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by MediaOne
Florida Telecommunications, Inc.
for arbitration of an
interconnection agreement with
BellSouth Telecommunications,
Inc. pursuant to Section 252(b)
of the Telecommunications Act of
1996.

DOCKET NO. 990149-TP
ORDER NO. PSC-99-2009-FOF-TP
ISSUED: October 14, 1999

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The following Commissioners participated in the disposition of
this matter:

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FINAL ORDER ON ARBITRATION

BY THE COMMISSION:

I. CASE BACKGROUND

On December 1, 1995, this Commission approved a stipulated agreement between MediaOne Florida Telecommunications, Inc., and BellSouth Telecommunications, Inc., providing for interconnection services between the two companies. That agreement expired on January 1, 1998, but the parties mutually agreed to extend the contract pending finalization of a successor agreement. Negotiations for a successor agreement failed, and on February 9, 1999, MediaOne filed a Petition for Arbitration, seeking the assistance of the Florida Public Service Commission in resolving the remaining issues.

The matters addressed herein concern originating and terminating traffic from Internet service providers (ISPs). Specifically, we have been asked to determine whether calls that originate from or terminate to ISPs should be defined as "local traffic" for purposes of the MediaOne/BellSouth Interconnection Agreement. The parties were also unable to reach agreement on reciprocal compensation arrangements. We note that this case represents the first time we have addressed these types of ISP issues outside the four corners of an existing interconnection agreement.

The parties have also asked us to determine the appropriate price MediaOne should pay BellSouth for Calling Name ("CNAM") data base queries. In addition, we have considered the appropriate manner for MediaOne to have access to BellSouth's network terminating wire (NTW) in multiple dwelling units (MDUs), and what BellSouth should be permitted to charge MediaOne for access to NTW.

II. ISP ISSUES

The FCC's treatment of ISP-bound traffic appears to be at the root of the problem in determining whether traffic is local, and

whether reciprocal compensation is due. The FCC has treated ISP-bound traffic as though it were local traffic and has exempted ISPs from paying access charges. In its February, 1999 Declaratory Ruling the FCC stated:

Although the Commission has recognized that enhanced service providers (ESPs), including ISPs, use interstate access services, since 1983 it has exempted ESPs from the payment of certain interstate access charges. (FCC 99-38, ¶5)

The FCC explains that the exemption was adopted at the inception of the interstate access charge regime to protect certain users of access services, such as ESPs, from the rate shock that would result from immediate imposition of carrier access charges. (FCC 99-38, ¶5 footnote 10) The FCC continues to allow ESPs to purchase their links to the public switched telephone network (PSTN) through intrastate business tariffs, rather than through interstate access tariffs. In addition, incumbent LEC expenses and revenues associated with ISP-bound traffic traditionally have been characterized as intrastate for separations purposes.

The FCC has acknowledged that its treatment of this traffic has been somewhat problematic. In a Declaratory Ruling issued February 25, 1999, it stated:

Until now, however, it has been unclear whether or how the access charge regime or reciprocal compensation applies when two interconnecting carriers deliver traffic to an ISP. . . . As a result, and because the Commission had not addressed inter-carrier compensation under these circumstances, parties negotiating interconnection agreements and the state commissions charged with interpreting them, were left to determine, as a matter of first impression, how interconnecting carriers should be compensated for delivering traffic to ISPs, leading to the present dispute. (FCC 99-38, ¶9)

Although the FCC issued a Declaratory Ruling concluding that ISP-bound traffic is jurisdictionally mixed, and appears to be largely interstate, the FCC added that adopting a rule governing inter-carrier compensation for ISP bound traffic to govern prospective compensation would serve the public interest. (FCC 99-38, ¶28) To this end, the FCC has issued a Notice of Proposed Rulemaking seeking comments on two proposals for a rule. Until such a rule is developed and implemented, the FCC has left it to state commissions to determine whether reciprocal compensation is due for this traffic.

BellSouth witness Varner does not believe that state commissions have the statutory authority under Section 252 of the 1996 Act to arbitrate this issue because inter-carrier compensation for interstate access is not governed by Section 251 of the Act. Witness Varner also does not believe that the FCC has the authority to "rewrite the Communications Act and vest the state commissions with the power to regulate matters relating to interstate communications that, under the Act, are specifically reserved to the FCC." Witness Varner sums it up by stating:

The FCC clearly asserted that they have jurisdiction over this traffic and they've exercised that jurisdiction. This is really an FCC issue. And as a result of that, any ruling that this Commission does make on this issue is really going to be temporary until the FCC issues their rules. The FCC was very clear about that in their order. That in saying at this point state commissions may apply or deal with this in 252-type arbitrations. However, at some point the FCC will issue their rules and whatever comes out of the rules is what will have to apply.

We agree that the FCC has claimed jurisdiction over this traffic and will ultimately adopt a final rule on this matter. We note that the FCC stated:

We emphasize that the Commission's decision to treat ISPs as end users for access charge purposes and, hence, to treat ISP-bound

traffic as local, does not affect the Commission's ability to exercise jurisdiction over such traffic. (FCC 99-38, ¶16)

Further, as previously discussed, the FCC does intend to adopt a final rule to govern inter-carrier compensation for ISP-bound traffic. Therefore, any decision we make will only be an interim decision. Accordingly, we hereby direct the parties to continue to operate under the terms of their current contract until the FCC issues its final ruling on whether ISP-bound traffic should be defined as local or whether reciprocal compensation is due for this traffic. MediaOne appears to agree with this approach. MediaOne stated in its brief:

Because, however, the FCC has under consideration proposals for the resolution of this issue, MediaOne would not object to the Commission's choosing to defer the issue pending the outcome of the FCC proceeding.

Upon consideration, we direct the parties to continue to operate under the terms of their current contract until the FCC issues its final ruling on whether ISP-bound traffic should be defined as local or whether reciprocal compensation is due for this traffic. The FCC has also determined that a rule concerning prospective inter-carrier compensation for this traffic would be in the public interest. To this end, it has issued a Notice of Proposed Rulemaking seeking comments on two proposals for such a rule.

III. CNAM PRICING

A Calling Name (CNAM) database provides the name of the calling party to a customer with caller ID number and name service. BellSouth witness Varner describes BellSouth's CNAM database service, how it works, and how it handles calls placed from outside the BellSouth region as follows:

BellSouth's CNAM Database Storage service allows ALECs, independent companies, wireless providers and paging companies to store and access name and number information in the BellSouth Calling Name

Database. With BellSouth's CNAM service, customers have access to a large volume of names from the extensive BellSouth customer database plus sharing agreements with other large database owners. When an end user initiates a call to another end user subscribed to Calling Name Service (e.g., Caller ID Deluxe), call setup information is passed to the called party's switch. The called party's switch then queries the BellSouth Signal Transfer Point ("STP") for Calling Name Information. If necessary, this connectivity can be accomplished through a third party STP. The BellSouth STP then passes the query to the BellSouth CNAM Service Control Point ("SCP") for resolution. Calling Name Information is then passed back through the BellSouth STP to the called party's switch and the subscriber's Caller ID display unit. For out-of-region callers, the BellSouth STP passes the query to an out-of-region CNAM SCP for resolution. Calling Name Information is returned through the BellSouth STP to the called party's switch and display unit.

On March 4, 1997, BellSouth and MediaOne signed an agreement, which they call an "Annex." This agreement provides the terms and conditions under which BellSouth is to provide MediaOne with CNAM. Both parties agree that this agreement is not part of BellSouth's and MediaOne's interconnection agreement. Exhibit A to the Annex states that \$50.00 per 1,000 access lines per month is the recurring flat rate charge for access to BellSouth's CNAM Service Control Point. Exhibit A further states that "The recurring flat rate will convert to a per query usage rate once query usage measurement capability becomes available." What the "per query usage rate" will be, and how it will be determined, however, is left unsaid.

According to BellSouth witness Varner, the rate BellSouth "intends to charge MediaOne" is \$0.01 per query. There seems to be some confusion within MediaOne, however, as to what BellSouth's proposed price is. MediaOne referred to \$0.016 in its Prehearing position; however, during the hearing MediaOne witness Maher asserted that a price of \$0.01 is a "40 fold increase over the

existing price." Since MediaOne witness Lane stated during the hearing that witness Maher "will discuss this issue [the CNAM price] in greater detail," it appears that MediaOne is aware that BellSouth's intended price is \$0.01 per query.

BellSouth witness Varner asserts that "the CNAM agreement is not governed by the requirements of Section 251 or Section 252 of the Act, the rates BellSouth charges for its CNAM database service is [sic] not an issue appropriate for arbitration." He maintains that this is true because:

MediaOne witness Maher asserts that for "this proceeding, the Commission should determine [that] the CNAM database is an unbundled network element. . . ." He states that, "I am not aware that any regulatory commission, including the FCC, has ruled one way or the other on this issue." Citing the FCC's rule 319 definition, he argues that:

Mr. Varner contends that CNAM cannot be a network element because it plays no role in the completion of a call. His argument overlooks the fact that the FCC has ruled that Calling Name Delivery is "adjunct-to-basic" (CC Docket No. 91-281, 10 FCC Rcd. 11700, para. 131) and thus itself a telecommunications service (see, CC Docket No. 96-149, 11 FCC Rcd 21905, para. 107). Because BST's CNAM service is essential to MediaOne's delivery of calling name to its Caller ID customers, the Public Service Commission can and should determine that it is an unbundled network element.

Witness Maher testified at the hearing that he did not know whether CNAM is available as a UNE in other jurisdictions. He did state that, "I would say that the pricing that we've seen would suggest that it's not -- if a UNE dictates a pricing level, it's definitely not an [sic] UNE based on the pricing that's out there in the market today."

BellSouth witness Varner states that "Access to BellSouth's CNAM database is not a necessary component for billing and collection, transmission, or routing of an end user's call." Witness Varner, however, leaves out an important part of Rule

51.319's definition -- namely, what follows the word "routing": "or other provision of a telecommunications service." MediaOne witness Maher does not address witness Varner's omission of "other"; instead, he refers to other FCC orders that deal with calling name.

Whether or not CNAM is a UNE determines the pricing of CNAM. If CNAM is a UNE as MediaOne asserts, then its rate must be based on a TELRIC cost standard. If it is not a UNE, as BellSouth asserts, then its pricing is BellSouth's prerogative.

On January 25, 1999, the United States Supreme Court vacated the FCC's rule 51.319, which listed the UNEs that an incumbent local exchange carrier must provide. The Supreme Court vacated Rule 51.319, "[B]ecause the Commission [FCC] has not interpreted the terms of the statute in a reasonable fashion. . . ." (AT&T Corp. v. Iowa Utilities Bd., 119 S. Ct. 721 (1999, slip opinion at 25) As of this writing, the FCC has not issued a new list of UNEs.

The Supreme Court opinion also stated in part:

The Commission [FCC] cannot, consistent with the statute, blind itself to the availability of elements outside the incumbent's network. That failing alone would require the Commission's rule to be set aside. In addition, however, the Commission's assumption that any [emphasis in original] increase in cost (or decrease in quality) imposed by denial of a network element renders access to that element "necessary," and causes the failure to provide that element to "impair" the entrant's ability to furnish its desired services is simply not in accord with the ordinary and fair meaning of those terms. (AT&T Corp v. Iowa Utilities Bd., 119 S. Ct. 721 (1999), slip opinion at 22)

With Rule 51.319 vacated, we must turn to the Supreme Court's decision for guidance. When asked through discovery whether BellSouth was aware of other CNAM database providers, BellSouth responded that it was aware of "comparable" service offered by Illuminet, Sprint United, US West, Bell Atlantic, and GTE.

In his rebuttal testimony, MediaOne witness Maher asserts that no other supplier can "provide MediaOne with access to BST's CNAM data." Witness Maher also states that:

Each ILEC's CNAM database includes only its subscribers and the subscribers of other LECs who store their subscribers' names and telephone numbers there. We can get CNAM access from, say, Bell Atlantic in Massachusetts and Virginia, but not in Florida or Georgia. BST is our only option here.

During the hearing, however, witness Maher stated that MediaOne uses Illuminet for its Massachusetts and Virginia operations because it does not have a contract with Bell Atlantic, since Bell Atlantic "does not have the capacity at this point to store our data [in Massachusetts]. In his deposition, witness Maher maintained that MediaOne had not "pursued" other options for CNAM in Florida, even though MediaOne uses Illuminet in other states. Witness Maher stated that MediaOne did not pursue using alternative providers because "our assumption is that if we go through another provider to get to BellSouth data, it will just be that much more expensive than getting the data or having the query made directly to BellSouth." MediaOne's assumption is "based on us thinking that BellSouth would charge the same per query rate to anyone retrieving that data," according to witness Maher. He further testified that this proceeding is MediaOne's "first real opportunity to arbitrate the CNAM rate."

Witness Maher testified that it was not until after his deposition that MediaOne attempted to obtain prices from alternative providers. MediaOne obtained a price per query of \$0.018 from Illuminet, the same price that MediaOne pays Illuminet to query the PacTel and Bell Atlantic databases. Witness Maher stated that Illuminet's "language is that basically they will charge the query rate plus a transport charge." He also stated that another source has proposed to provide MediaOne with CNAM data, but that the price is "much more expensive because they charge a higher price than BellSouth, plus a transport charge."

Without the certainty of an FCC rule on UNEs, we must rely on the Supreme Court decision for guidance. It is clear from the record in this proceeding that there are alternative providers to

BellSouth; in fact, MediaOne is using one of the alternative providers. The record shows that, not until three days before the hearing, after a deposition, did MediaOne try to obtain price quotes from other vendors. The record also shows that BellSouth did, however, provide MediaOne with the names of several alternative vendors prior to the deposition. MediaOne received price quotes from only two of the vendors, both of which had higher prices than proposed by BellSouth.

We find MediaOne's overall testimony on this issue to be inconsistent and insufficient. For example, according to MediaOne, BellSouth is MediaOne's only option in Florida. After questioning by BellSouth, MediaOne explains that it can use Illuminet in Florida, as it does in California and in Bell Atlantic's territory, albeit at a higher price. MediaOne states that CNAM was not part of its interconnection agreement in Massachusetts, so MediaOne did not arbitrate it. MediaOne's former agreement with BellSouth for CNAM in Florida, however, is also outside of the interconnection agreement. With regards to alternative providers, it is clear that MediaOne has made little or no effort to ascertain if there are better prices than BellSouth's price. There is no record evidence that MediaOne made any serious attempt to obtain the best price possible for CNAM.

Based on the record evidence, we do not believe that CNAM would pass the "necessary" and "impair" test described by the Supreme Court. Without substantive evidence, it is simply impossible to conclude that CNAM must be a UNE.

In its Prehearing position, BellSouth states that "MediaOne already has an agreement with BellSouth for this service and is inappropriately seeking to be relieved of its contractual obligations." It appears as if BellSouth bases this claim on its belief that because CNAM is not a UNE, MediaOne's efforts to arbitrate the rate for CNAM mean that MediaOne is "inappropriately seeking to be relieved of its contractual obligations."

Witness Varner agreed that it is not "reasonable" for MediaOne to agree to "any price that BellSouth came up with" after BellSouth had the measurement capability. MediaOne witness Maher stated that MediaOne "intends to honor its existing calling name delivery contract with BellSouth and migrate to a per query usage rate."

According to witness Maher, "MediaOne has not agreed to pay whatever rate BST might wish to charge."

We believe that BellSouth's allegation that MediaOne is "inappropriately seeking to be relieved of its contractual obligations" does not speak to the issue of what the CNAM price should be. The real issue is what the price should be for CNAM. That price is a function of whether or not CNAM is a UNE. There is insufficient evidence in the record to conclude that CNAM is a UNE. Thus, CNAM's price is not required to be priced according to the FCC's TELRIC standards. Accordingly, we find that BellSouth is free to propose what it considers to be a market-based price. In addition, BellSouth's price for a CNAM query is the lowest of the comparable options entered in this record; therefore, we find no basis for concluding that it is unreasonable.

IV. NTW IN MDUs

In order to market and provide its local exchange services to residents in multi-dwelling units (MDUs), MediaOne is seeking access to network terminating wire (NTW) owned and controlled by BellSouth. BellSouth believes it has offered MediaOne a reasonable method of access to its NTW.

BellSouth's Proposal to Provide MediaOne Access to NTW

BellSouth witness Milner describes NTW as another part of BellSouth's loop facilities, referred to as the sub-loop element loop distribution. In multi-story buildings, NTW is connected to the riser cable and fans-out the cable pairs to individual customer suites or rooms on a given floor within the building. Where riser cable is not used, NTW is attached directly to BellSouth's loop distribution cables. BellSouth witness Milner states that riser cable is a part of that sub-loop element referred to as loop distribution, and is located on the network side of the demarcation point. Witness Milner provides that NTW is the last part of the loop on the network side of the demarcation point. A network interface device (NID) establishes the demarcation point between BellSouth's network and the inside wire at the customer's premises.

Witness Milner states that each ALEC will provide its own terminal in proximity to the BellSouth garden terminal or connector block within the wiring closet. Witness Milner provides that BellSouth will install an access terminal that contains a cross-

connect panel on which BellSouth will extend the ALEC-requested NTW pairs for the ALEC's use. According to BellSouth witness Milner, the ALEC would then extend a tie cable from its own terminal to the access terminal, which BellSouth provides, to access the NTW pairs that were requested by the ALEC.

MediaOne's Proposal to Access BellSouth's NTW

MediaOne witness Lane provides that there is no practical solution for MediaOne to deliver telephone service to MDU residents utilizing its cable facilities. For that reason, MediaOne requires reasonable access to BellSouth's NTW.

Referring to Hearing Exhibit 13, witness Beveridge explains that BellSouth provisions service by connecting two cross-connect blocks with short jumper wires. Witness Beveridge testified that the two terminal blocks, one labeled MDU Riser Cable or NTW, and the other labeled ILEC Outside Plant Termination, represent existing facilities owned by BellSouth. Witness Beveridge also explained that the terminal blocks labeled MDU Riser Cable or NTW and ILEC Outside Plant Termination would be located inside a wiring closet. Based on this testimony, it appears that the term BST CSX, discussed in the preceding paragraph, represents BellSouth's wiring closet.

MediaOne witness Beveridge further testified that MediaOne would separate the cross-connects that constitute BST CSX, or BellSouth's wiring closet, in BellSouth's proposal. Witness Beveridge concluded that, depending on the physical configuration of the cross-connects, rearrangement may not be required in some cases. Witness Beveridge added that because the cross-connect on which BellSouth's NTW terminates is now physically separate, it functionally becomes the ACCESS CSX. We note that, according to Exhibit 13, BST CSX would no longer represent BellSouth's wiring closet as it is traditionally configured. Witness Beveridge emphasizes that because all local exchange companies have equal access to the ACCESS CSX, all of the companies can provision service quickly, easily, and on equal footing.

MediaOne witness Beveridge's testimony provides an illustration of how MediaOne's proposal would work. MediaOne witness Beveridge testified that if a given CLEC wins a customer from BellSouth, that CLEC's technician would simply disconnect BellSouth's jumper from BellSouth's BST CSX and ACCESS CSX. The

CLEC technician would then connect the CLEC's jumper between their CSX and ACCESS CSX, thereby connecting its distribution facilities to the first NTW pair. To identify ownership of ACCESS CSX, we look to MediaOne witness Beveridge's testimony offered at the hearing. MediaOne witness Beveridge testified that the terminal block, labeled MDU Riser Cable or NTW, on Hearing Exhibit 13, is BellSouth's facility. We believe that this testimony demonstrates that ACCESS CSX is BellSouth's property.

Classification of NTW as an UNE

BellSouth witness Milner testifies that neither the 1996 Act nor the FCC specified that NTW is an unbundled network element, but at a minimum, a technically feasible form of access must be identified. Expanding on this point, BellSouth witness Varner testified that the specific list of network elements that BellSouth must provide will not be known until the FCC completes its proceeding on remand of Rule 51.319. Witness Varner stated that BellSouth will provide MediaOne with NTW capability before the FCC completes its proceedings. Witness Varner also testified that BellSouth reserves the right to reconsider whether it will continue to offer NTW upon completion of the FCC's proceedings.

In addition, MediaOne witness Beveridge testified that, as long as BellSouth claims NTW as part of its network, we should categorize NTW as a UNE. Witness Beveridge asserts that BellSouth will likely refuse to provide NTW to its competitors unless it is required to do so. He testified that if MediaOne is required to purchase an entire unbundled loop from BellSouth, MediaOne's service will be uneconomic.

We note that the Unbundled Network Terminating Wire MediaOne Information Package, provided by BellSouth to MediaOne, indicates that BellSouth will provide access to NTW in states where BellSouth is required to offer "sub-loop unbundling." These states are Florida, Georgia, Kentucky and Tennessee. Therefore, we need not make a ruling regarding whether or not BellSouth's NTW is a UNE.

Appropriate Method for Connecting to BellSouth's Terminal Blocks

BellSouth's witness Milner testified:

In its First Report and Order (CC Docket No. 96-98, released August 8, 1996) at paragraph 198, the FCC included the following statement:

'Specific, significant, and demonstrable network reliability concerns associated with providing interconnection or access at particular point, however, will be regarded as relevant evidence that interconnection or access at that point is technically infeasible.'

BellSouth witness Milner further stated:

The FCC elaborated further on this point at paragraph 203 of that same order by stating:

'We also conclude, however, that legitimate threats to network reliability and security must be considered in evaluating the technical feasibility of interconnection or access to incumbent LEC networks. Negative network reliability effects are necessarily contrary to a finding of technical feasibility. Each carrier must be able to retain responsibility for the management, control, and performance of its own network.' (emphasis added)

BellSouth witness Milner asserted that the access to NTW sought by MediaOne is not technically feasible. Witness Milner testified that MediaOne's proposal would render BellSouth incapable of managing and controlling its network in the provision of service to its end users, or in providing portions of its network to other ALECs for their use in providing services to their end users. Witness Milner emphasized that MediaOne's proposal raises the question of how BellSouth would know if an ALEC had used BellSouth's NTW, thus effectively denying BellSouth control of its own property.

BellSouth witness Milner testified that closer examination of MediaOne's proposal immediately reveals that MediaOne's technicians could, either intentionally or unintentionally, disrupt the services provided by BellSouth to its end user customers. Witness Milner provided that BellSouth's garden terminal is a relatively

small device and it has no means of protecting against the intentional or unintentional disruption once access to the interior of the garden terminal has been made. Witness Milner asserted that BellSouth's proposal to provide MediaOne access to NTW retains network reliability, integrity, and security for both BellSouth's network and the ALEC's network. Witness Milner stated that under BellSouth's proposal, MediaOne could put some sort of cover over its terminal block and its network terminating wire pairs and thereby protect them from tampering by a third party.

BellSouth witness Milner stated that BellSouth makes NTW available to any ALEC through BellSouth's established process. He also provided that other local service providers are using BellSouth's NTW to compete with BellSouth. BellSouth witness Milner testified that there was only one ALEC in Florida that obtains access to BellSouth's NTW in the manner as that being offered MediaOne, although ALECs in other states use BellSouth's NTW in the same manner.

MediaOne's witness Lane claimed that 40% of the homes included in MediaOne's network are MDUs and that BellSouth's proposal to provide NTW greatly impedes MediaOne's ability to provide service to MDU residents.

MediaOne witness Beveridge testified that MediaOne's proposal requires the separation of BellSouth's cross-connect for NTW from BellSouth's cross-connect for BellSouth's distribution facilities. Beveridge stated that, depending on the physical configuration, in some instances actual rearrangement of BellSouth's cross-connects may not be necessary. He also stated that in the majority of cases, no new hardware or rearrangement would be necessary because BellSouth's existing hardware could be used. Witness Beveridge stated that if new hardware were required, it could be provided by BellSouth, interested ALECs, or an agreed-upon third party on a cost sharing basis since both BellSouth and other ALECs benefit. For MDUs where BellSouth already has NTW installed, we do not agree with MediaOne's position that BellSouth should bear any responsibility for cost if MediaOne's approach prevails. In such MDUs BellSouth would have already born the cost of provisioning, and any additional costs should be born by the CLEC being accommodated.

In addition, MediaOne witness Beveridge stated:

Mr. Milner quotes a portion of paragraph 203 of the FCC's First Report and Order in CC Docket No. 96-98 (August 8, 1996) for the proposition that network reliability and security are legitimate factors in assessing technical feasibility. He omitted the following that appears in the same paragraph.

Thus, with regard to network reliability and security, to justify a refusal to provide interconnection or access at a point requested by another carrier, incumbent LECs must prove to the state commission, with clear and convincing evidence, that specific and significant adverse impact would result from the requested interconnection or access.
(emphasis added)

MediaOne witness Beveridge testified that witness Milner has not claimed that providing MediaOne access to NTW at BellSouth's terminals would produce specific and significant adverse impacts to BellSouth's service. He asserted that Milner has provided no evidence to support claims of network reliability, integrity, and security problems. We agree, however, with BellSouth's argument that network reliability, integrity, and security could be impaired by giving competitors open access to BellSouth's terminals and wiring.

MediaOne witnesses Lane and Beveridge also take issue with BellSouth's proposed method of access to NTW because it requires the presence of a BellSouth technician. A BellSouth technician must be present during the initial installation of BellSouth's proposed access terminal, and during the follow-on provisioning of the NTW pairs requested by MediaOne, unless MediaOne requests provisioning of NTW pairs during the initial site set-up. In addition to coordination problems, MediaOne claims that the price it must pay for a BellSouth technician to perform work serving no useful purpose creates a competitive disadvantage for MediaOne by substantially increasing the cost of provisioning service. MediaOne points out that this negatively impacts other competing ALECs as well.

MediaOne witnesses Lane and Beveridge testified that the coordination of an installation between itself, a customer, and BellSouth will create an unnecessary inconvenience for the

customer, cause MediaOne's product to be less desirable, and virtually preclude MediaOne from serving MDU residents, denying consumers an alternative to BellSouth.

The record does not contain evidence of any case which would support a proposal where one party is seeking to use its own personnel to, in effect, modify the configuration of another party's network without the owning party being present. We find that MediaOne's proposal to physically separate BellSouth's NTW cross-connect facility from BellSouth's outside distribution cross-connect facilities is an unrealistic approach for meeting its objectives. Therefore, BellSouth is perfectly within its rights to not allow MediaOne technicians to modify BellSouth's network.

The parties have stipulated that the reclassification of Florida's demarcation point for MDUs to the minimum point of entry (MPOE), is not an issue. It appears, however, that MediaOne's proposal effectively attempts to achieve that objective. Based on the evidence presented at the hearing, we believe that it is in the best interests of the parties that the physical interconnection of MediaOne's network be achieved as proposed by BellSouth.

We find from the record that at least one other ALEC in Florida and an unknown number of ALECs in other states have been able to provide service based on BellSouth's NTW proposal. Thus, we believe that MediaOne should be able to provide service using BellSouth's NTW proposal. It appears that MediaOne's key issue is price. We also conclude that the BellSouth-installed access terminal should be reserved for exclusive use by MediaOne. If other ALECs are permitted access to the terminal installed for MediaOne, MediaOne would be subject to the same network security and control problems that BellSouth uses in its arguments. In addition, because MediaOne is required to pay BellSouth for the access terminal and the labor to install it, we believe it would be inappropriate for BellSouth to offer other ALECs a sharing arrangement on this terminal, without MediaOne's approval.

First Pair of NTW and NID

MediaOne witness Beveridge testified that MediaOne does not have access to all of BellSouth's NTW pairs because BellSouth reserves the first pair for its own use. As a result, witness Beveridge notes that MediaOne's technician could be subjected to a time consuming task of locating the first jack within a customer premise to connect inside wiring to the NTW pair provided by

BellSouth. Witness Beveridge proposed that MediaOne should be given access to BellSouth's first NTW pair any time it is available. MediaOne witness Beveridge stated that BellSouth does not offer a NID in its proposal to furnish MediaOne NTW; thus, MediaOne's technician would be required to locate the first jack within the residential unit being served. Because BellSouth requires MediaOne to install a NID, MediaOne would be subjected to additional costs, which could be avoided in many instances if BellSouth would allow MediaOne access to the first pair of NTW. MediaOne witness Beveridge testified that the requirement to install a NID is unnecessary, placing MediaOne at a competitive disadvantage through increased costs. Witness Beveridge also testified that requiring the installation of a NID would inconvenience the customer.

BellSouth witness Milner stated that MediaOne would not necessarily have to rewire the NID, and alternatives such as a simple splitter jack could be used by MediaOne to gain access to the second pair of NTW that is installed in most existing MDUs. Witness Milner also testified that BellSouth will relinquish the first pair in certain cases, typically when no spare pairs are available other than the first NTW pair. BellSouth witness Milner testified that BellSouth retains the first NTW pair for operational efficiency.

Based on the testimony, we believe that BellSouth's retention policy regarding the first pair of NTW is unreasonable for servicing facilities-based ALECs. Customers would ultimately suffer the burden of inconvenience at the hands of BellSouth's policy. Therefore, we believe that BellSouth should be required to relinquish the first NTW pair and make it available to MediaOne, unless BellSouth is using the first pair of NTW to concurrently service the same MDU. We also believe that most, if not all, of MediaOne's concerns related to the NID will then be resolved.

Therefore, the appropriate manner for MediaOne to have access to network terminating wire (NTW) in multiple dwelling units is BellSouth's proposal. However, we hereby modify it in two respects; (1) MediaOne shall have access to the first pair of NTW, and (2) BellSouth will not permit other ALECs access to the special access terminal installed by BellSouth for MediaOne, without MediaOne's approval.

V. NTW ACCESS CHARGES

MediaOne asserts that if we order BellSouth to move the demarcation point to the minimum point of entry (MPOE), NTW would become inside wire. As such, MediaOne believes it would no longer be obligated to pay BellSouth anything for access to NTW. While MediaOne's petition for arbitration asked the Commission to determine the appropriate demarcation point for BellSouth's network facilities serving MDUs, the parties agreed that, for purposes of this proceeding, the appropriate demarcation point is set forth in Rule 25-4.0345(1)(b), Florida Administrative Code¹.

As for price, MediaOne's apparent position is more accurately represented by MediaOne witness Beveridge's statement that we should require BellSouth to provide network terminating wire as an unbundled network element, priced at TELRIC.

During the hearing, MediaOne witness Beveridge noted that BellSouth proposes a charge of \$171 for first-time site preparation and connection of up to 25 NTW pairs, \$40.47 for every subsequent site visit, and \$0.60 per month for each NTW pair provided. When questioned, witness Beveridge agreed that under MediaOne's proposal, MediaOne would connect at BellSouth's access terminal and use BellSouth's network to connect to the customer's premises. When asked if MediaOne had an objection to the recurring charge of \$0.60 per pair per month, MediaOne witness Beveridge stated it did not. When asked if he was aware of a cost study for NTW filed by BellSouth witness Caldwell on April 1, 1999, MediaOne witness Beveridge also stated that he was not aware.

BellSouth witness Caldwell testified that the purpose of her testimony is to present the cost study results for NTW. In her testimony, witness Caldwell stated:

The cost study is based on the cost study methodology accepted by this Commission in Order No. PSC-98-0604-FOF-TP in Docket Nos. 960757-TP, 960833-TP and 960846-TP dated April 29, 1998. This Order established rates for

¹ Rule 25-4.0345(1)(b), Florida Administrative Code, states in pertinent part, that the demarcation point is "the point of physical interconnection (connecting block, terminal strip, jack, protector, optical network interface, or remote isolation device) between the telephone network and the customer's premises wiring."

numerous network capabilities, ranging from 2-Wire Analog Loop Distribution to Physical Collocation. On page 12 of the Order, the Commission ordered rates that "cover BellSouth's Total System (Service) Long-run Incremental Costs (TSLRIC) and provide some contribution toward joint and common costs.

Referring to Order No. PSC-98-0604-FOF-TP, issued April 29, 1998, in Docket Nos. 960757-TP, 960833, and 960846, BellSouth witness Caldwell testified that we have already recognized that consideration must be given to an appropriate level of shared and common costs, and that the order identifies the appropriate modeling technique and set of basic inputs that should be used. Witness Caldwell further testified that BellSouth has incorporated the Commission's comments into the NTW cost study that was submitted. In describing these major categories, BellSouth witness Caldwell stated:

First of all, for the cost of capital we used a 9.9%. For taxes we used Florida-specific. For the shared cost, we excluded them from the TELRIC labor rate as had been ordered, and we also reduced the network operating expense by the amount ordered. The common cost equaled [sic] 5.12% and, in fact, what we did was used the shared and common model that the Florida Staff made changes to and submitted back to BellSouth as a result of the docket on unbundled network elements. So it is the exact same model.

The Commission also determined that ordering costs should be established in a separate and future docket. Thus it was recommended that the local carrier service center, or the LCSC, cost should be eliminated from the cost study. This is one area where BellSouth has deviated slightly from the Commission's order and it's based on our interpretation of that order.

During cross-examination, BellSouth witness Caldwell was asked if the Service Inquiry category includes the account team, installation and maintenance, and the LCSC. The witness indicated that it did. Witness Caldwell was also asked if the Service

Inquiry category LCSC was the only function listed. She indicated that it was. Then, witness Caldwell was asked if the service order category was included in the activities for the service visit charge, and if service order includes the work management center and the installation and maintenance. She testified that it does.

When asked why BellSouth's cost study included charges for Service Inquiry and Service Order, an apparent contradiction to the Commission Order on which BellSouth's cost study was based, BellSouth witness Caldwell explained that BellSouth's interpretation "is in terms of firm order." She also explained that for the site survey per MDU/MTU, BellSouth simply surveyed the particular site where the NTW would be ordered. At the time, however, BellSouth did not have a service order. Witness Caldwell further explained that BellSouth's interpretation was that this was a specific type of activity that would be handled by the LCSC but was not the result of a service order. In response to a statement that the Commission Order required the elimination of that category, BellSouth witness Caldwell testified that it was a matter of interpretation, and that it could be done.

BellSouth witness Caldwell provided testimony that the services BellSouth's workers perform under the Service Inquiry and Service Order functions were not related to a firm order. We note, however, that BellSouth witness Caldwell's cost study shows under the Service Inquiry activity that the Account Team takes the CLEC request for site visit, records information on Service Inquiry (SI) form, and passes firm order SI to Installation and Maintenance (I&M), among other tasks. Based on indications in BellSouth's cost study that a firm order is passed from SI to I&M, we conclude that the guidance provided in our Order No. PSC-98-0604-FOF-TP, issued April 29, 1998, is useful in this instance. Therefore, BellSouth shall be allowed to charge MediaOne the prices for access to network terminating wire shown in Appendix A to this Order, Approved Prices for NTW.

Those prices were determined by eliminating the non-recurring direct costs for all functions identified as either Service Inquiry or Service Order in Hearing Exhibit 17. We also applied the Gross Receipts Tax Factor and the Common Cost Factor to the revised direct costs in the same fashion as defined in that exhibit.

VI. CONCLUSION

We have conducted these proceedings pursuant to the directives and criteria of Sections 251 and 252 of the Act. We believe that our decisions are consistent with the terms of Section 251, the provisions of the FCC's implementing Rules that have not been

vacated, and the applicable provisions of Chapter 364, Florida Statutes.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that the specific findings set forth in this Order are approved in every respect. It is further

ORDERED that for ISP-bound traffic the parties continue to operate under the terms of their current contract until the FCC issues its final ruling on whether ISP-bound traffic should be defined as local or whether reciprocal compensation is due for such traffic. It is further

ORDERED that the price at which CNAM database service is offered may be market-based. It is further

ORDERED that the cost to MediaOne for BellSouth network terminating wire shall be that reflected in the chart attached to this Order and incorporated herein as Appendix A. It is further

ORDERED that the parties shall submit written agreements memorializing and implementing our decisions herein within 30 days of the issuance of this Order. It is further

ORDERED that the agreements shall be submitted for approval in accordance with Section 252(e)(2)(b) of the Telecommunications Act of 1996. It is further

ORDERED that this docket shall remain open pending approval of the agreements submitted in compliance with this Order.

By ORDER of the Florida Public Service Commission this 14th day of October, 1999.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

CLF

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6).

APPENDIX A

			Nonrecurring	
C o s t Ref. #	Rate Element	Recur.	First	Add.
A.15	<i>Unbundled Network Terminating Wire</i>			
A.15.1	Unbundled NTW	.6011		
A.15.2	NTW Site Visit - Survey, per MDU/MTU Complex		120.10	
A.15.3	NTW Site Visit - Setup, per terminal		39.43	36.42
A.15.4	NTW Access Terminal Provisioning including first 25 pair panel, per terminal		101.09	100.25
A.15.5	NTW Existing Access Terminal Provisioning, second 25 pair panel, per terminal		29.75	28.90
A.15.6	NTW Pair Provisioning, per pair		4.48	3.64
A.15.7	NTW Service Visit, Per Request, per MDU/MTU Complex		21.18	

EXHIBIT E

COMMISSIONERS:

STAN WISE, CHAIRMAN
ROBERT B. BAKER, JR.
DAVID L. BURGESS
SOS DUDION
LAUREN "BUBBA" McDONALD, JR.

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ORDER

In re: Interconnection Agreement Between MediaOne Telecommunications of Georgia, LLC and BellSouth Telecommunications, Inc.; Docket 10418-U

In re: MediaOne Telecommunications of Georgia, LLC v. BellSouth Telecommunications, Inc., Docket No. 10135-U

On November 12, 1998, MediaOne Telecommunications of Georgia LLC (MediaOne) filed a complaint with Georgia Public Service Commission (Commission) against BellSouth Telecommunications, Inc. (BellSouth) alleging that BellSouth had violated provisions of an Interconnection Agreement that the two parties had entered into on July 15, 1996. Docket 10135-U. On February 10, 1999, MediaOne initiated its arbitration seeking resolution by the Commission of certain issues for a new agreement between it and BellSouth. Docket 10418-U. MediaOne asked the Commission to conduct the arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 (the "Act," or the "federal Act") (47 U.S.C. 252(b)). These two dockets were consolidated on May 27, 1999, and came before the Commission for hearing on August 24, 1999. All the issues in Docket 10135-U have been resolved by agreement of the Parties, and only two sets of issues remain in Docket 10418-U. These are issues relating to the Network Terminating Wire (NTW) and the Calling Name (CNAM) Database.

I. JURISDICTION AND PROCEEDINGS**A. Federal Requirements**

The issues submitted for arbitration fall within Sections 251 and 252 of the federal Telecommunications Act of 1996 ("Act"). These sections contain pricing standards and other requirements relating to interconnection and access to unbundled network elements (UNEs). Just as these standards and requirements create a new framework for the telecommunications marketplace, the Act also established arbitration by state commissions as a new method for the resolution of disputes that may arise among existing companies and new entrants.

In its arbitration ruling resolving the open issues and imposing conditions upon the parties to the agreement, as required by Section 252(c) of the Act, the Commission must:

- (a) ensure that the resolution and conditions meet the pricing standards and requirements of Section 251 of the Act;
- (b) establish any rates for interconnection, services, or network elements according to the pricing standards of Section 252(d); and
- (c) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

Section 251(c)(3) provides, with respect to access to unbundled network elements such as unbundled loops, that each incumbent local exchange carrier ("LEC") has the duty:

to provide . . . nondiscriminatory access to network elements on an unbundled basis . . . on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. . . .

Section 252(d)(1) provides the following pricing standard for network elements:

Determinations by a State commission of . . . the just and reasonable rate for network elements for purposes of subsection (c)(3) [of Section 251] -

(A) shall be -

(i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the . . . network element . . . , and

(ii) nondiscriminatory, and

(B) may include a reasonable profit.

The Commission notes that the Federal Communications Commission ("FCC") issued its First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 (Order FCC No. 96-325) (adopted August 1, 1996; released August 8, 1996), adopting rules to implement Section 251 and certain portions of Section 252 of the Act (First Report and Order). The FCC Order was to become effective on September 30, 1996 (30 days after the August 29, 1996 publication of a summary in the Federal Register). However, portions of the FCC Order were stayed and subsequently vacated by the Eighth Circuit Court of Appeals.

On January 25, 1999, the Supreme Court issued its decision in AT&T Corporation v. Iowa Utilities Board. This matter had come before the Supreme Court on writs of certiorari from the decision of the Eighth Circuit Court of Appeals. The Supreme Court found that several of the FCC rules that the Eighth Circuit had vacated should be reinstated. The Supreme Court ruled, however, that the FCC did not adequately consider the "necessary and impair" standard in determining which network elements incumbents must provide to CLECs on an unbundled basis. As a result, the Supreme Court itself vacated the FCC's Rule 319.

On September 15, 1999, the Federal Communications Commission (FCC) adopted its Third Report and Order and Fourth Further Notice of Proposed Rulemaking (Third Report and Order), Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC

Docket No. 96-98. The FCC's written order was released on November 5, 1999. In this Third Report and Order, the FCC revised, in light of the Supreme Court's order, the list of the network elements that LEC must provide on an unbundled basis and issued a new Rule 319.

B. General Provisions of State Law

In addition to its jurisdiction of this matter pursuant to Section 252 of the federal Act, the Commission also has general authority and jurisdiction over the subject matter of this proceeding, conferred upon the Commission by Georgia's Telecommunications and Competition Development Act of 1995, O.C.G.A. 46-5-160 *et seq.*, and generally O.C.G.A. 46-1-1 *et seq.*, 46-2-20, 46-2-21, and 46-2-23.

Pursuant to O.C.G.A. 46-2-20(a), the Commission has general supervision of all telephone companies. See also O.C.G.A. 46-2-21(b)(4); Camden Tel. & Tel. Co. v. City of St. Marys, 247 Ga. 687, 279 S.E.2d 200 (1981); City of Dawson v. Dawson Tel. Co., 137 Ga. 62, 72 S.E. 508 (1911). Pursuant to O.C.G.A. 46-2-20(b), the Commission is also authorized to perform the duties imposed upon it of its own initiative.

The Commission has the authority, pursuant to O.C.G.A. 46-2-20(e), to examine the affairs of all companies under its supervision and to keep informed as to their general condition, their capitalization, and other matters, not only with respect to the adequacy, security, and accommodation afforded by their service to the public and their employees but also with reference to their compliance with all laws, orders of the Commission, and charter requirements. Pursuant to subsection (f) of that section, the Commission has the power and authority to examine all books, contracts, records, papers, and documents of any person subject to its supervision and to compel the production thereof.

II. ISSUES AND DISCUSSION

A. Network Terminating Wire (NTW)

a. Network Terminating Wire (NTW) is an unbundled network element

Both BST and MediaOne acknowledge that the network terminating wire (NTW), the final portion of the loop owned by BellSouth, is a subloop element. BellSouth's Brief, 3-4; MediaOne's Brief, p. 4. MediaOne asked that the Commission declare the NTW a UNE. MediaOne's Brief, p. 4. BellSouth recognized that this Commission previously required subloop unbundling, but reserved the right to withdraw its offering for NWT upon completion of the FCC's UNE remand proceeding. Tr. 263.

The FCC has now completed its UNE remand proceeding. In the *Third Report and Order*, the FCC found that incumbent LECs, such as BST, "must provide unbundled access to subloops nationwide, where technically feasible." *Third Report and Order*, ¶ 205. Subloops were defined as "portions of the loop that can accessed at terminals in the incumbent's outside plant." *Third Report and Order*, ¶ 206; Rule 319(a)(2). The FCC intended its definition of subloop to be

broad in order to allow requesting carriers "maximum flexibility to interconnect their own facilities" at technically feasible points. Third Report and Order, ¶207. Based on its review of the record in this matter, and based on the FCC's Third Report and Order, the Commission finds that NTW is a subloop element and that it is a UNE.

b. **The Minimum Point of Entry (MPOE) is the appropriate the point of interconnection in Multi-Dwelling Units (MDUs)**

MediaOne has requested that the minimum point of entry (MPOE) be designated as the point of demarcation in an MDU. MediaOne's Brief, p. 5; tr. p. 44. MediaOne proposes that each LFC provide its own cross connect (CSX) facility in the wiring closet to connect from the building back to its network. Each LFC would connect its customers within the MDU by means of an "access CSX." This requires only one connector from the wiring closet to the individual units. Thus, the presence of multiple technicians is not required to change service. MediaOne's Brief, p. 5.

BellSouth argues that the demarcation point is established by BellSouth according to the preferences of the property owner. If the owner wants to establish a single demarcation point, BellSouth will comply with the request; if the building own does not want a single point of demarcation, BellSouth will provide demarcation points in each tenants' office, apartment or suite. BellSouth's Brief, p. 2. BellSouth proposes that its own technicians perform the work to make NTW available to MediaOne and that MediaOne be charged a non-recurring rate for this labor. BellSouth's Brief, p. 5. Under BellSouth's proposal, the CLEC installs its own terminal in proximity to BellSouth's garden terminal or wiring closet. BellSouth will then install an access terminal "in between" the garden terminal or wiring closet and the CLEC's terminal that contains a cross-connect panel onto which BellSouth will extend the CLEC-requested NTW pairs from BellSouth's garden terminal or wiring closet. The CLEC will then extend a tie cable from its terminal and connect to the pairs it has requested. BellSouth's Brief, p. 5; Tr. at 171.

In its Third Report and Order, the FCC stated that the point of demarcation should be used to define the termination point of the loop. Third Report and Order, ¶ 168. The demarcation point is the "point on the loop where the telephone company's control of the wire ceases, and the subscriber's control (or, in the case of some multiunit premises, the landlord's control) of the wire begins." Third Report and Order, ¶ 169; See 47 C.F.R. § 68.3. In the context of competing carriers serving multi-unit premises, the FCC declined to amend its rules to eliminate multiple demarcation points in favor of a single demarcation point; however, the FCC found that "the availability of a single point of interconnection will promote competition." Third Report and Order, ¶ 226. The FCC further found that:

To the extent there is not currently a single point of interconnection that can be feasibly accessed by a requesting carrier, we encourage parties to cooperate in any reconfiguration of the network necessary to create one. If parties are unable to negotiate a reconfigured single point of interconnection at multi-unit premises, we require the incumbent to construct a single point of interconnection that will be fully accessible and suitable for use by multiple carriers. Any disputes regarding

the implementation of this requirement, including the provision of compensation to the incumbent LEC under forward-looking pricing principles, shall be subject to the usual dispute resolution process under section 252.

Third Report and Order, ¶ 226; Rule 319(a)(2)(B).

As discussed in the prior section, subloops are portions of the loop that can be accessed at terminals in the incumbent's outside plant. An accessible terminal is "a point on the loop where technicians can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber inside. These would include a technically feasible point near the customer premises, such as the pole or pedestal, the NID . . . , or the minimum point of entry to the customer premises (MPOE)." Third Report and Order, ¶ 206.

As discussed in the next section, the Commission finds that interconnection at the MPOE is technically feasible. Further, the Commission agrees with the conclusion of the FCC that the availability of a single point of interconnection will promote competition. The Commission finds that the MPOE is an appropriate point of interconnection in MDUs whether or not the demarcation point is at the MPOE under 47 C.F.R. § 68.3. The Commission finds that designating the MPOE as a point of interconnection does not alter the point of demarcation. To the extent there is not currently a single point of interconnection that can be feasibly accessed by MediaOne, consistent with the FCC's Third Report and Order, BellSouth must construct a single point of interconnection that will be fully accessible and suitable for use by multiple carriers.

c. Technical Feasibility, Security and Accountability

BellSouth states that MediaOne's proposal is not technically feasible. BellSouth's Brief, p. 10. BellSouth argues that "MediaOne's proposal would make it impossible for BellSouth to ensure the safety and security of its network, and would make it equally impossible for BellSouth to maintain accurate records of the use being made of its network by other service providers." *Id.* at 11. To address these concerns, BellSouth proposes that its own technicians perform the work required to make NTW available to MediaOne.

MediaOne argues that BellSouth failed to show that the MediaOne's requested form of interconnection will produce specific and significant adverse impacts to BellSouth's network. MediaOne's Brief, p. 7. In fact, MediaOne asserts that BellSouth's NTW proposal provides greater opportunity for damage to the facilities and interruption of service. *Id.* at 8. MediaOne states that to address BellSouth's concerns that "a procedure could be put in place by the Commission to require notice to BellSouth regarding any change made by any LEC or CLEC to any other's customer's service." *Id.* at 7.

In its Third Report and Order, the FCC established a "rebuttable presumption that the subloop can be unbundled at any accessible terminal in the outside loop plant." Third Report and Order, ¶ 223. In an arbitration proceeding, the incumbent has the burden of demonstrating that it is not technically feasible to unbundle the subloop at these points. *Id.*

While ensuring the safety and security of BellSouth's network and the accuracy of BellSouth's records are legitimate concerns, the Commission finds that these concerns can be adequately addressed through the implementation of appropriate procedures. The Commission agrees with MediaOne that a procedure could be put in place by the Commission to require notice to a carrier regarding any change made by any LEC or CLEC to the carrier's customer's service. The Commission directs BellSouth and MediaOne to negotiate reasonable procedures for notification of changes of service. The parties shall jointly file a proposed procedure within 30 days of the date of this order. To address BellSouth's concern that a carrier may not honestly notify BellSouth of the use of its facilities, the Commission notifies the parties that the proposal, once approved by this Commission, shall be incorporated as part of the order of the Commission. Thus, in addition to any other remedies BellSouth may have, the failure to notify BellSouth of the use of its facilities in violation of the approved procedure may result in the imposition of penalties by the Commission under O.C.G.A. § 46-2-91.

BellSouth also complains that if BellSouth's network was harmed by MediaOne that BellSouth would bear the financial burden of repairing the network. The Commission addressed a similar issue in Commission Docket 6801-U. In that case AT&T wanted the ability "to use any existing capacity on BellSouth's NID or to ground BellSouth's loop and connect directly to BellSouth's NID." Docket 6801-U, Order of December 4, 1996, p. 46. The Commission permitted this form of interconnection, but found:

In such an event, the burden of properly grounding the loop after disconnection and maintaining same in proper order and safety must be the responsibility of AT&T. AT&T or any other party connecting to BellSouth's NID shall assume the full liability for its actions and for any adverse consequences that could result.

Id. In this case, the Commission similarly finds that while MediaOne may use its own technicians to interconnect at the MPOE, it may only do so if it shall assume the full liability for its actions and for any adverse consequences that could result. The joint notification procedure discussed above, shall include a requirement that parties notify other carriers of any damage to the other carrier's facilities.

The Commission finds that interconnection at the MPOE is technically feasible. The Commission finds that MediaOne shall be permitted to use its own technicians to perform the work required to make NTW available to MediaOne. As stated in the prior section, to the extent there is not currently a single point of interconnection that can be feasibly accessed by MediaOne, consistent with the FCC's Third Report and Order, BellSouth must construct a single point of interconnection that will be fully accessible and suitable for use by multiple carriers. Such single points of interconnection shall be constructed consistent with MediaOne's proposal such that MediaOne shall provide its own cross connect (CSX) facility in the wiring closet to connect from the building back to its network. MediaOne would then be able to connect its customers within the MDU by means of an "access CSX."

d. BellSouth's reservation of the "First Pair" to each unit

MediaOne argues that BellSouth "should be required to relinquish the "first pair" serving each unit in the MDU. MediaOne's Brief, p. 9. BellSouth argues that it should be permitted to reserve the first pair for its use. BellSouth's Brief, pp. 12-13.

As MediaOne demonstrated at the hearing, BellSouth's proposal requires rewiring of the first jack in each MDU in order to provide service. Tr. 42-44. It also requires use of either condominium NIDs or splitter jacks to provide multi-line service to each MDU unit. These devices stick out from the wall. They also increase the costs to competitors and make the provision of service by competitors more difficult. Tr. 67.

In addressing this same issue, the Florida Public Service Commission stated:

[W]e believe that BellSouth's retention policy regarding the first pair of NTW is unreasonable for servicing facilities-based ALECs. Customers would ultimately suffer the burden of inconvenience at the hands of BellSouth's policy. Therefore, we believe that BellSouth should be required to relinquish the first NTW pair and make it available to MediaOne, unless BellSouth is using the first pair of NTW to concurrently service the same MDU.

FPSC Docket No. 990149-TP, Order No. PSC-99-2009-FOF-TP, p. 16.

After review the record in this case, the Commission agrees with the conclusion of the Florida Commission that this practice is unreasonable. The Commission further agrees that BellSouth should be required to relinquish the first NTW pair and make it available to MediaOne, unless BellSouth is using the first pair of NTW to concurrently provide service.

e. Cost-based rate

As discussed above, NTW is a UNR. Therefore, the rates for NTW must be forward-looking and cost based. BellSouth has proposed non-recurring rates that were set based on the premise that BellSouth's technicians would perform the work required to make NTW available to MediaOne. Because the Commission has declined to adopt BellSouth's proposal, the Commission rejects BellSouth's proposed non-recurring rates. As discussed above, the Commission directs BellSouth and MediaOne to negotiate and file with the Commission reasonable procedures for notification of changes of service. To the extent that such procedures require a compensation mechanism, e.g., a non-recurring charge, the parties shall jointly file a proposed compensation mechanism within 30 days of the date of this Order.

BellSouth also proposed a recurring charge of \$1.37 for NTW. BellSouth's proposed recurring charge was generated by means of a forward-looking cost study previously approved by this Commission. MediaOne did not file its own cost-study and has provided no basis for rejection or modification of BellSouth's cost study or BellSouth's proposed rate. Accordingly, the Commission adopts BellSouth's recurring charge for NTW. As discussed above, the FCC

has required incumbents "to construct a single point of interconnection that will be fully accessible and suitable for use by multiple carriers." Third Report and Order, ¶ 226; Rule 319(a)(2)(B). If BellSouth does not believe that its recurring charge is sufficiently high to cover the costs of implementing this requirement, BellSouth may petition the Commission to reexamine this recurring charge. The Commission notes, however, that the recurring charge approved in this matter is already significantly higher than the corresponding rate of \$0.60 recently approved by the Florida Public Service Commission. FPSC Docket No. 990149-TP, Order No. PSC-99-2009-FOF-TP, Appendix A.

B. Calling Name (CNAM) Database

a. CNAM is an unbundled network element

The Calling Name (CNAM) Database conveys the calling name associated with the calling number and is utilized by MediaOne to provide the caller name portion of Caller ID. Tr. 248-49. MediaOne argues that CNAM should be identified as a UNE and that the price must be cost-based. MediaOne's Brief, pp. 12-14. BellSouth contends that CNAM is not a UNE and that a market-based rate is appropriate. BellSouth's Brief, p. 15.

In its Third Report and Order, the FCC found:

In the *Local Competition First Report and Order*, the Commission defined call-related databases as "databases, other than operations support systems, that are used in signaling networks for billing and collection or the transmission, routing, or other provision of telecommunications service." The Commission further required incumbent LECs to provide unbundled access to their call-related databases, including but not limited to: the Line Information database (LIDB), the Toll Free Calling database, the Local Number Portability database, and Advanced Intelligent Network databases. No commenter in this phase of the proceeding challenges the definitions of call-related databases or AIN that were adopted in the *Local Competition First Report and Order*, and we find no reason for modifying those definitions. As discussed below, however, we clarify that the definition of call-related databases includes, but is not limited to, the calling name (CNAM) database, as well as the 911 and E911 databases.

Third Report and Order, ¶ 403 (Footnotes omitted); ~~see~~ Rule 319(a)(2)(A). Based on the above, and based on the evidence submitted in this matter, the Commission finds that CNAM is a call-related database and, accordingly, is a UNE.

b. Cost-based rate

As discussed in the prior section, CNAM is a UNE. Thus, the provision of CNAM by BellSouth must be cost based. 47 U.S.C. § 252(d). No forward looking cost study for CNAM

has been filed in this matter. Accordingly, the Commission directs BellSouth to file a cost study supporting a per query cost based rate for CNAM within 30 days of the date of this Order.

III. ORDERING PARAGRAPHS

After consideration of the evidence presented in this arbitration proceeding, in conjunction with consideration of the applicable law and regulatory policy, the Commission concludes that the disputed issues in this arbitration shall be resolved according to the rulings discussed within the preceding sections of this Order. In addition, the Commission adopts and sets out the ordering paragraphs below.

WHEREFORE IT IS ORDERED that:

- A. All findings, conclusions and statements made by the Commission and contained in the foregoing sections of this Order are hereby adopted as findings of fact, conclusions of law, and statements of regulatory policy of this Commission.
- B. The Commission directs BellSouth and MediaOne to negotiate reasonable procedures for notification of changes of service as set forth in the body of this Order. The parties shall jointly file a proposed procedure within 30 days of the date of this Order. To the extent that such procedures require a compensation mechanism, the parties shall jointly file a proposed compensation mechanism within 30 days of the date of this Order.
- C. The Commission directs BellSouth to file a cost study supporting a per query cost based rate for CNAM within 30 days of the date of this Order.
- D. The Commission directs the Parties to negotiate a comprehensive agreement that incorporates the rulings in this Order, and file it not later than 45 days from the date of this Order. If the Parties cannot reach agreement within that time frame, each Party shall file with the Commission its proposed version of the agreement by the 45th day. Such filings must clearly delineate the area(s) of dispute between Parties regarding contract language. The Commission will then adopt the proposal, or the portions of the competing proposals, which the Commission finds appropriate in order to incorporate its arbitration ruling into a comprehensive arbitrated agreement.

Once the Parties have developed the arbitrated agreement by either process, they shall file it with the Commission. The arbitrated agreement shall clearly state which provisions were resolved by the arbitration ruling, and which provisions were negotiated by the Parties. The Parties shall also cause notice to be published as required by the Commission. Copies of the arbitrated agreement shall also be served on the Consumers' Utility Counsel Division and all Participants to the arbitration.

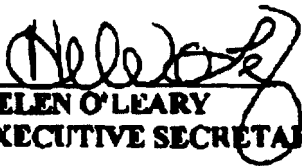
The filing of the arbitrated agreement shall initiate the 30-day review process by the Commission pursuant to Section 252(e)(1) of the Act. This 30-day review shall be

the formal Commission process which results in a final Commission decision on the agreement, and which affords an opportunity for intervention and hearing upon appropriate grounds under federal and state law.

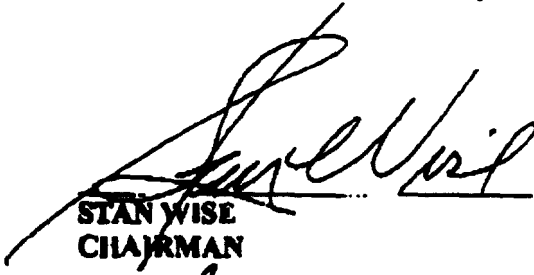
E. Any motion for reconsideration, rehearing, or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

F. Jurisdiction over this matter is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

The above by action the Commission in Administrative Session on the 21st day of December 1999.


HELEN O'LEARY
EXECUTIVE SECRETARY

12/21/99
DATE


STAN WISE
CHAIRMAN

12-21-99
DATE